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THE LAW FIRM OF HARRIS & BURDICK
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EXAMINER

PARSLEY, DAVID J

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAYMOND E. UMBGAUGH, JR.

Appeal 2006-2201
Application 10/621,618
Technology Center 3600

Decided: February 19, 2008

Before DONALD E. ADAMS, DEMETRA J. MILLS, and
LORA M. GREEN, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b). Independent claims 1, 9, and 15 are representative of the claims on appeal, and reads as follows:

1. A seed germination and plant supporting utility comprising:
 - a spacer having a central opening therethrough between first and second sides of said spacer; and
 - mesh secured on both of said sides of said spacer, wherein said mesh is held spaced apart a selected distance by said spacer and enshrouds said central opening, said mesh having mesh openings of a size small enough to directly support a seed thereon at said first side of said spacer and to be securely engaged by plant root growth therethrough at said second side of said spacer.
9. A seed germination and plant supporting utility comprising:
 - a first spacer having a passageway therethrough between first and second ends of said first spacer;
 - a first mesh swathe positioned at said first end of said first spacer and having mesh openings of a size small enough to directly support a seed thereon, and a second mesh swathe positioned at said second end of said first spacer and having mesh openings of a size small enough to be securely engaged by plant root growth therethrough; and
 - first and second retainers securable to said first spacer at said first and second ends thereof, respectively, adjacent to said first and second mesh swathes positioned thereat to retain said first and second mesh swathes at said first and second ends of said first spacer, each of said retainers having an opening therethrough in correspondence with said first spacer passageway when associated with said first spacer.
15. A seed germination and plant supporting utility comprising:
 - a spacer ring having a central opening therethrough between opposite ends of said spacer ring, said spacer ring having an inside diameter adjacent said central opening and outside diameter;
 - first and second mesh each with a diameter greater than said inside diameter of said spacer ring and each positioned at a different one of said opposite ends of said spacer ring, said first mesh having mesh openings of a size small enough to directly support a seed thereon and said second mesh having mesh openings of a size small enough to be securely engaged by plant root growth therethrough; and
 - retaining means at each of said opposite ends of said spacer ring for retaining said first and second mesh at said opposite ends of said spacer ring;
 - wherein said first and second mesh are held spaced apart a selected distance by said spacer ring and enshroud said central opening.

The Examiner relies upon the following references:

Barham	US 4,057,930	Nov. 15, 1977
Farrell	US 5,225,342	July 6, 1993
Hillel	EP 00/52264	May 26, 1982
Takahashi (translation)	JP 4-88928	March 23, 1992

We reverse.

DISCUSSION

Claims 1-3, 6, 7, 9-11, 13, and 15-18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Takahashi.

Relying primarily on Figure 6 of Takahashi, the Examiner states that Takahashi

discloses a seed germination plant supporting utility comprising a spacer—at the middle of items 1-2 as seen in Figure 6, having a central opening therethrough between first and second sides of the spacer—see for example figure 6, and mesh—at 3-5, secured on both sides of the spacer—see figure 6, wherein the mesh is held spaced apart a selected distance by the spacer and enshrouds the central opening—see for example figure 6, the mesh having mesh openings of a size small enough to directly support a seed thereon—see figures 1-7 and the English abstract, at the first side of the spacer and to be securely engaged by plant root growth therethrough at the second side of the spacer—see for example figures 1-7 and the English abstract. The Japanese patent further disclose[s] a first retainer—at 1d, 2c, 5a, 4a, associable with the spacer at one of the sides thereof for holding the mesh thereat with each of the retainers having an opening therethrough in correspondence with the spacer opening—see for example figure 6. The Japanese patent further disclose[s] that the first and second mesh each have a diameter greater than the inside diameter of the spacer ring and each positioned at different ends of the spacer—see for example figures 4-6.

(Answer 3-4.)

The burden is on the examiner to set forth a prima facie case of unpatentability. *See In re Glaug*, 283 F.3d 1335, 1338 (Fed. Cir. 2002). To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001).

With respect to Independent claim 1, Appellants argue that the mesh of Takahashi is not secured on both ends of the spacer, that is, the frame 2 of Takahashi (Br. 17). Appellants assert further that the filter 5 is not secured at all, but merely lies on the bottom of the frame (*id.* at 18).

Figure 6 of Takahashi is reproduced below:

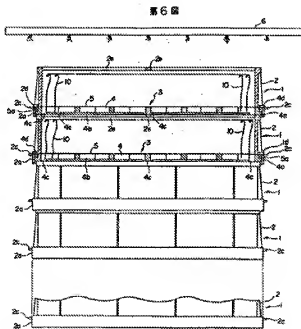


Figure 6 shows vegetable cultivating containers, (1), stacked together, wherein the bottom face of the vegetable cultivating container (1) is connected at the upper side of vegetable cultivating container (1) (Takahashi

translation, p. 6). It is unclear from the figure what is at the middle of items 1-2, but it is assumed it is the edge of the vegetable cultivating container (1).

Figure 1 of Takahashi shows a disassembled diagonally viewed diagram of the vegetable cultivating container (1), and is reproduced below:

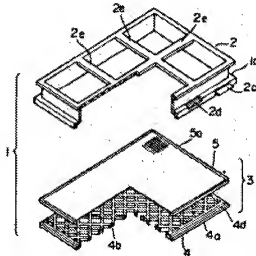


Figure (1) is a vegetable cultivating container (1), consisting of a rectangular container frame (2) and a cultivating bed (2) that connects to the bottom face of the container frame (2) (*id.* at 5).

The cultivating bed (3) consists of the main part (4) and a filter (5), and a cross-frame (4b) that is integrally formed within a bed frame (4a) (*id.*). A step part (4d) is formed at the upper part of the bed frame (4a) of the main part of the cultivating bed (4z) and the frame part (5a) of the filter (5) fits into the step part (4d).

Claim 1 requires “mesh secured on both of said sides of said spacer.” At most, Takahashi teaches mesh secured at only the bottom of the spacer, which would be the edge of the container frame (2). Takahashi teaches that

the vegetable cultivating container only contains one filter. The second filter would be provided by stacking of the vegetable cultivating container (1), with the second filter being at the bottom of the second, stacked, container. Thus, the second filter would not be secured to the top end of spacer provided by the edge of the container frame (2), as the containers are merely stacked one upon the other (Takahashi translation, p. 6). Thus, as Takahashi does not teach every element and limitation, arranged as in claim 1, the rejection is reversed as to claims 1-3, 6 and 7.

With respect to independent claim 9, Appellants argue that Takahashi does not teach the additional structure specified in claim 9 for the retainers, that is “retaining means at each of said opposite ends of said spacer ring for retaining said first and second mesh at said opposite ends of said spacer ring.” (Br. 22.) The Examiner, Appellants argue, relies on 1d, 2c, 4a, and 5a in Figure 6, “without specifying what specifically about these reference numerals might be interpreted as equivalent structure to the claimed structure.” (*Id.*)

Even if 1d, 2c, 4a, and 5a could be interpreted as a retaining means, it would only be at the bottom of the spacer provided by the edge of the container frame (2). Thus, Takahashi does not teach “retaining means at each of said opposite ends of said spacer” as required by claim 9, and the rejection must be reversed as to claims 9 and 11-13.

With respect to independent claim 15, Appellants argue that Takahashi does not teach a “ring shaped spacer” as required by claim 1 (Br. 24). We agree as the container of Takahashi is the shape of a rectangle, and the rejection is reversed as to claims 15-18. Moreover, claim 15 also requires “retaining means at each of said opposite ends of said spacer ring

for retaining said first and second mesh at said opposite ends of said spacer ring.” As noted above with respect to claim 9, Takahashi does not teach “retaining means at each of said opposite ends of said spacer,” and the rejection must be reversed for that reason as well.

Claims 15-18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Takahashi.

Takahashi is relied upon as above. According to the Examiner, Takahashi “does not disclose that the spacer has a circular shape of a ring and the mesh has a circular diameter.” (Answer 10). The Examiner concludes, however, “it would have been obvious to take the spacer and mesh of [Takahashi] and change its shape into a round ring-like shape, for aesthetic purposes.”

As noted above with respect to the rejection of claims 1-3, 6, 7, 9-11, 13, and 15-18 under 35 U.S.C. § 102(b) as being anticipated by Takahashi, Takahashi does not teach “retaining means at each of said opposite ends of said spacer” as required by claim 15, and the rejection must be reversed.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious by Takahashi as combined with Barham.

Barham is relied upon to teach fiber mesh (Answer 9). Thus, Barham does not remedy the deficiencies of Takahashi, and the rejection is reversed.

Claims 8, 12, 14, and 19 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious by Takahashi as combined with Farrell.

Farrell is relied upon for teaching a maintenance platform (Answer 6-7, *see also* at 11). Thus, as Farrell does not remedy the deficiencies of Takahashi, the rejection is reversed.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Takahashi and Farrell as further combined with Hillel.

Hillel is relied upon for teaching containment and feeding apparatus. As Hillel does not remedy the deficiencies of Takahashi as combined with Farrell, the rejection is reversed.

CONCLUSION

In summary, as the Examiner has failed to set forth a prima facie case that 1-3, 6, 7, 9-11, 13, and 15-18 are anticipated by Takahashi; that claims 15-18 are anticipated by, or, in the alternative, obvious over Takahashi; that claims 4 and 5 are obvious over Takahashi as combined with Barham; that claims 8, 12, 14, and 19 are obvious over Takahashi as combined with Farrell claims; or that claim 20 is obvious over Takahashi and Farrell as further combined with Hillel; all of the rejections on appeal are reversed.

REVERSED

saj

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